IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 817 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE Y.B.BHATT

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES YES

2. To be referred to the Reporter or not? NO :

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO NO

5. Whether it is to be circulated to the Civil Judge? : NO NO

RAMANBHAI MAHIJIBHAI SOLANKI

Versus

STATE OF GUJARAT

Appearance:
MR BD KARIA for Petitioner
MR ND GOHIL, ADDL. PUBLIC PROSECUTOR for Respondent No. 1
NOTICE SERVED BY DS for Respondent No. 2

CORAM : MR.JUSTICE Y.B.BHATT

Date of decision: 30/03/2000

ORAL JUDGEMENT

1. This is a petition under Article 227 of the Constitution of India, though styled as one under Articles 226 and 227 of the Constitution, at the instance of the original complainant.

2. The petitioner - complainant had filed a complaint against respondent No.2 herein alleging that the accused had committed offence u/s 406 and 420 of the Indian Penal Code by retaining possession of the tractor entrusted to him by the father of the complainant, who was the registered owner of the tractor in the R.T.O. records. The allegations have been made in the said complaint by the complainant on the basis that his father has expired, and that therefore, he becomes the legal owner of the tractor in question.

3. It appears that the process has been issued on the basis of the said complaint and the trial is pending. At that stage, the original complainant and also the accused both filed applications before the learned JMFC u/s 451 of the Criminal Procedure Code for being placed in possession of the tractor. The learned Magistrate granted the application of the accused, subject to terms and conditions set out in the said order.

4. Being aggrieved by the said order, the complainant filed the revision before the Sessions Court. The Sessions Court by its judgement and order in the said revision application, dismissed the same. Hence, the present petition at the instance of the original complainant.

5. Before discussing the merits of the present petition, it is desirable to bear in mind the principles laid down by the Supreme Court in the context of the scope and ambit, and the powers and limitations of the High Court, while exercising jurisdiction under Article 227 of the Constitution of India. The Supreme Court, in the case of Mohmmad Yunus v/s Mohammad Mustaqim [AIR 1984 SC 38] and Khali Ahmed Bashir v/s Tufelhussein S. Sarangpurwala [AIR 1988 SC 184], has held that the High Court, while examining a petition under Article 227 of the Constitution of India, cannot reappreciate the evidence and cannot disturb the findings of fact recorded by the courts below except where the same are perverse, and even errors of law cannot be corrected.

6. Even otherwise, it appears obvious on the record as noted by the Sessions Court, that so far as the title to the tractor is concerned, the R.T.O. records indicate that the same vests in the name of the father of the complainant, that the said tractor is subject to a hypothecation loan granted in favour of the father of the complainant etc. However, as rightly noted by the Sessions Court, the question of title to movable property

is not the only factor which is required to be taken into consideration when passing an order for custody of the muddamal articles u/s 451 of the Criminal Procedure Code. In this context, the relevant consideration is who has a better right to possession. In this limited context, the Sessions Court has rightly found, that the complainant has himself stated in the complaint that the accused was given possession of the tractor and trolly by the deceased father of the complainant in 1994, and that the accused was placed in possession for a specific purpose, namely, for doing agricultural work in partnership with the father of the complainant. Obviously therefore, the possession held by the accused was both legal and permissive possession so far as the real owner is concerned. Obviously therefore, if the possession of the accused was legal on the day when the tractor was seized by the police during the course of investigation, the learned Magistrate was justified in directing that the possession should be restored to the accused. The fact that stringent conditions have been imposed for return of the tractor to the accused would certainly safeguard the interest of the complainant, and the complainant could therefore have no grievance in this regard.

7. In the premises aforesaid, I see no illegality or infirmity in the impugned order passed by the Sessions Court. There is therefore no substance in the present application and the same is therefore required to be dismissed. Accordingly, rule is discharged.

8. Looking to the particular facts and circumstances and looking to the fact that the accused does not appear to have taken possession of the tractor in question although he was entitled to do so under the orders passed by the learned JMFC, it would appear that the condition of the tractor would seriously deteriorate with the passage of time. The learned JMFC is therefore directed to hear and conclude the Criminal Case No.208/98 as expeditiously as possible.

*****

parmar*